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SUPREME COURT, U.S.

No. 82-977

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1982

Minnesota Community College
Faculty Association, et al.,

Appellants,

v.

Leon W. Knight, et al.,

Appellees.

On Appeal from the United States District Court
for the District of Minnesota

MOTION TO STRIKE APPELLEES' BRIEF

Appellants hereby move the Court to strike the Brief of the Appellees in its entirety pursuant to Rule 34.6 on the basis that it is burdensome, irrelevant and immaterial. The Brief of Appellees is devoted to issues presented to this Court in their unsuccessful appeal in Knight v. Minnesota Community College Faculty Association, No. 82-901. The Court summarily affirmed the lower court decision in that case by order dated March 28, 1983. The appellees have not at any time petitioned for a rehearing concerning the summary affirmance. Because appellees seek to re-litigate the Court's summary affirmance order in their brief on the merits in this case, appellants move that the brief be stricken.

Appellees initiated this action in the lower court to challenge the constitutionality of certain provisions of Minnesota's Public Employment Labor Relations Act ("PELRA"), Minn. Stat. §§179.61-179.76 (1982). PELRA establishes a comprehensive framework for collective bargaining by Minnesota's public employees,

which includes the recognition of exclusive representatives to carry out collective bargaining on behalf of appropriate units of public employees. Appellees' primary claim was that appellant Minnesota Community College Faculty Association ("MCCFA") could not constitutionally act as an exclusive representative of the instructors employed in Minnesota's state community college system. A central contention of this claim was that any system of exclusive representation amounted to an improper delegation of governmental sovereignty contrary to this Court's rulings in A.L.A. Schechter Poultry Corp. v. United States, 295 U.S. 495 (1935), and Carter v. Carter Coal Co., 298 U.S. 238 (1936). As a separate claim, the appellees asserted that PELRA's "meet and confer" procedures violated their rights under the First Amendment.

In its order, the lower court squarely rejected the appellees' delegation argument and upheld PELRA's exclusive representation provisions. The appellees filed their appeal on September 30, 1982. In their Jurisdictional Statement, appellees phrased their first "Question Presented" as follows:

I. Is the Minnesota Public Employment Labor Relations Act (PELRA) repugnant to the First Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, because it requires an agency of the State of Minnesota to negotiate terms and conditions of employment for Appellants and other of the State's community-college faculty with the Minnesota Community College Faculty Association (MCCFA), a self-interested private organization, thereby:

A. delegating to MCCFA a legislative power to make public policies binding on Appellants; and

B. depriving Appellants and all other non-members of MCCFA throughout Minnesota of legal equality of opportunity to influence the course of public-policy decisionmaking in the community colleges?

Jurisdictional Statement, No. 82-901, i. This Court summarily affirmed that aspect of the lower court decision in No. 82-901 on March 28, 1983.

The lower court sustained appellees' contention that PELRA's "meet and confer" provisions, as applied, violated appellees' First Amendment rights. The "meet and confer" issue (as well as the lower court's apportionment of costs) was appealed by the Appellant Labor Organizations in No. 82-977. Appellant Minnesota State Board for Community Colleges also appealed the "meet and confer" issue in No. 82-898. On the same date that the Court summarily affirmed in 82-901, the Court noted probable jurisdiction in Nos. 82-898 and 82-977, consolidating the two appeals for oral argument.

A review of the appellees' brief on the merits in No. 82-977 indicates that the entire brief is an attempt to re-litigate, and to insert into oral argument, the issues as to which the Court summarily affirmed in No. 82-901. From the Question Presented to the Summary of Argument and throughout their 50-page brief, appellees are asserting the delegation argument based on Schechter and Carter, in an attempt to challenge PELRA's system of exclusive representation. Nowhere is appellees' attempt to challenge the Court's summary affirmance in No. 82-901 more brazen than in the Conclusion to their brief:

This Court should vacate its summary affirmance in No. 82-901 and: (i) affirm the decision of the District Court that PELRA is unconstitutional insofar as it licenses MCCPA, as exclusive representative in the community colleges, to monopolize the "meet-and-confer" process by virtue of its unconstitutional status as such representative; and (ii) reverse the decision of the District Court sustaining the validity of exclusive representation under PELRA's "meet-and-negotiate" provisions; or, in the alternative, (iii) order the parties to submit further briefs, and itself schedule oral argument, on the issues Knight and the other faculty-members originally raised in No. 82-901.

Brief of Appellees, 50.

The appellees have had a fair and complete opportunity to fully litigate the issues presented in No. 82-901 as to which this Court has ordered summary affirmance. The appellants should not be further burdened with responding to the Brief of Appellees

in No. 82-977 which again presents these same issues, either in a reply brief or in oral argument. Appellants therefore move the Court to strike the brief in its entirety.

Date: September 28, 1983

OPPENHEIMER, WOLFF, POSTER,
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STATE OF MINNESOTA)

COUNTY OF RAMSEY)

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AFFIDAVIT OF SERVICE BY MAIL

MARIANN MACALUS, being first duly sworn on oath, deposes and says that on the 28th day of September, 1983, she served the attached **MOTION TO STRIKE APPELLEES' BRIEF** upon the following named persons and their respective addresses (which are the last-known addresses of said persons) by placing a copy of said **MOTION TO STRIKE APPELLEES BRIEF** in envelopes properly addressed and postage pre-paid and placing said envelopes in the U.S. mails at St. Paul, Minnesota.

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Subscribed and sworn to before me
this 28th day of September, 1983.

Geraldine G. Kiley
Notary Public

